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I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST-CLASS MAIL IN AN ENVELOPE ADDRESSED TO: ASSISTANT COMMISSIONER FOR PATENTS, WASHINGTON, D.C. 20231, ON SEPTEMBER 20, 2001

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September 20, 2001
DATE

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Mahajan et al. Date: September 20, 2001
Serial No.: 09/538,396 Group Art Unit: 1638
Filed: March 29, 2000 Examiner: Ibrahim, M.
For: "Maize Rad50 Orthologue and Uses Thereof"

Assistant Commissioner for Patents
Washington, D.C. 20231

Response to Restriction Requirement

This is in response to the Restriction Requirement issued August 31, 2001, in which the Examiner has required restriction between Group I (Claims 1-8), Group II (Claims 9-10) and Group III (Claim 11). Applicants hereby elect with traverse to prosecute the claims of Group I and expressly reserve the right to file divisional applications or take other such appropriate measures to protect the inventions in the remaining claims. No change of inventorship is required due to this election of Group I. The Applicants respectfully traverse the Restriction Requirement and request reconsideration of the same.

The Examiner has concluded that inventions I and II are related as product and process of use. The Examiner asserts that the process (modulating the level of Rad50 in a plant) can be practiced with another materially different product (by

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directly introducing protein into plants). The Applicants respectfully traverse. The Examiner is directed to Claim 9 of Group II where the process *as claimed* comprises:

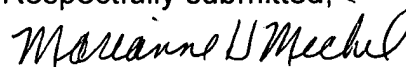
“(a) introducing into a plant cell a recombinant expression cassette ***comprising a Rad50 polynucleotide of claim 1*** operably linked to a promoter;”

Inventions of Groups I and III are disclosed and claimed as capable of use together as a polynucleotide of Group I can be used to produce the polypeptide of Group III using the method of Group II. As such, Claim 9 is directed to this process and may be considered a unifying claim. Further, Claim 1 (b) is directed to any polynucleotide that encodes a polypeptide of SEQ ID NO: 2, again linking these two Groups.

Inventions of Groups II and III are disclosed and claimed as capable of use together. Claim 9 of Group II claims a process wherein the level of Rad50 is modulated (Groups I and III). This process culminates in not only modulating the level of Rad50 polynucleotides of Group I, but also the cognate Rad50 polypeptides of Group III.

As all the Groups fall into the Examiner's Art Unit, it is also believed that Groups I, II and Group III can be searched together without an undue burden on the Examiner. Therefore, the Applicants respectfully request that restriction between Groups I, II and III in this application be withdrawn.

Respectfully submitted, .



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